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In The

Supreme Court of the United States

October Term, 1979
No. 79-1637

J. P. STEVENS & CO., INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD and AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR J. P. STEVENS & CO., INC.

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J. P. Stevens & Co., Inc., the petitioner, makes the following responses to the contentions raised in the brief for the National Labor Relations Board in opposition to the petition for a writ of certiorari in the instant case.

1. The Board represents that the petitioner failed to raise any claim concerning its constitutionally protected property rights "before the Board and did not raise it in the court of appeals except in its motion for reconsideration of the Court's denial of its motion for a stay of mandate." Board Brief, Note 6. It is correct that the petitioner did not raise the issue before the Board, since the issue

did not exist at the time. The recommended order of the administrative law judge did not contain the constitutionally offensive remedies as to which the petitioner seeks this Court's review, and the General Counsel of the Board did not object to his failure to include such provisions in his order (A25, A29). On the other hand, the petitioner did raise the issue of its constitutional rights before the court of appeals by numerous references to the "balancing" requirement mandated in *NLRB v. Babcock & Wilcox,* 351 U.S. 105 (1956). For example, in its petition for rehearing, the petitioner contended that "[a]s the Supreme Court said in *NLRB v. Babcock & Wilcox,* 351 U.S. 105, 112, there must be 'accommodation' between the organizing rights of employees and the property rights of the employer."

2. The Board states that "although petitioner has not been charged with contempt since 1977, it is clear that petitioner continues to violate the Act." Board Brief, p. 7. In support of this representation, the Board lists numerous cases involving this petitioner. *See* Board Brief, Note 8. The Board's claim is a gross misrepresentation of fact. All of the violations found to exist in the listed rulings occurred before the beginning of the compliance period for the 1977 contempt decree.

3. Despite the contentions by the Board, the fact remains that this Court has consistently required the Board to balance the employees' rights against the employer's property rights, and articulate its reasons for denying the employer's property rights, before denying the employer its constitutionally protected property rights. In this case, it is undisputed that the Board failed to do so. It is equally clear that the Board's newly developed remedy of permitting union organizers to enter onto company property as a remedy for unfair labor prac-

tices continues to gain in popularity with the Board. *See Sambo's Restaurant,* 247 NLRB No. 122, 103 LRRM 1181 (1980).

WHEREFORE, the petitioner urges the Court to issue a writ of certiorari in the instant case.

Respectfully submitted,

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